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10 UNITED STATES DISTRICT COURT
11 SOUTHERN DISTRICT OF CALIFORNIA

12 UNITED STATES OF AMERICA,) Case No.: 11cr1286 AJB
13)
14 Plaintiff,) ORDER DENYING DEFENDANT'S
15 v.) MOTION TO DISMISS COUNT ONE OF
16 JORGE VALDAVINOS-TORRES,) THE INDICTMENT
17 Defendants.)
18 _____)

17 Defendant is charged with 8 U.S.C. § 1326, being a deported alien found in the United States.
18 The charge involves the prior conviction of an aggravated felony in 2007 under Cal. Health and Safety
19 Code § 11378.

20 Defendant challenges the indictment pursuant to 8 U.S.C. § 1326(d). The essence of the
21 challenge is whether the available documents concerning the underlying conviction satisfies the
22 modified categorical analysis called the Modified Categorical Approach which would determine if the
23 record would unequivocally establishes that defendant was convicted of a generically defined crime,
24 even if the statute defining his crime is overly inclusive. *Martinez-Perez*, 417 F.3d 1022 (9th Cir. 2005).
25 A prior conviction based on an overly inclusive criminal statute which resulted from a guilty plea rather
26 than a jury verdict will support a sentence enhancement only if the records confirms that the plea
27 “necessarily” rested on the fact identifying the offense as generic. *Sheppard v. United States*, 544 U.S.
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13 (2005). In making this determination, “any inquiry beyond statute and charging document must be narrowly restricted to implement the object of the statute and avoid evidentiary dispute. *Id.*


The defendant relies upon *United States v. Vidal*, 504 F.3d 1072 (9th Cir. 2007) (*en banc*) and *Ruiz-Vidal v. Gonzalez*, 473 F.3d 1072 (9th Cir. 2007). However, unlike *Vidal* and *Ruiz-Vidal*, the documents in this case demonstrate that defendant admitted the controlled substance in his underlying case was methamphetamine. Defendant specifically plead guilty to count two of the Complaint charging him with possession of methamphetamine for sale in violation of Cal. Health and Safety Code § 11378. The defendant’s Plea Agreement and the Minute Order showed that the defendant understood that he was pleading guilty to count two of the Complaint, as did the abstract of judgment. Despite this being a *People v. West*¹ plea, this is sufficient to demonstrate an admission to all of the material allegations, including the allegation of methamphetamine. The totality of the record made this quite clear, unlike the cases cited by defendant..

As the Court pointed out in *Ruiz-Vidal*, “Although charging papers alone are never sufficient, ‘charging papers may be considered in combination with a signed plea agreement’”*Id* at 1078 (internal citations omitted).

Based on this fact, and the reasons set forth on the record at the hearing, defendant’s Motion to Dismiss is *denied*.

IT IS SO ORDERED.

DATED: June 27, 2011


Hon. Anthony J. Battaglia
U.S. District Judge

¹3 Cal. 3d 595 (1970)